Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CORPORATION COUNSEL OF
THE CITY OF NEW YORK,

Petitioner,

-against-

ERIK M.,

A Person Alleged To Be A Juvenile Delinquent,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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November 8, 2000

QUESTION PRESENTED

Was the Fourth Amendment right to be free from unreasonable searches and seizures violated when police, acting in their community care-taking capacity to insure both timely notification to a suicide victim's next-of-kin and proper disposition of her remains, initiated a warrantless search for identifying information within the room she resided and died, and unexpectedly discovered contraband which led to the respondent's prosecution?

PARTIES TO THE PROCEEDING

Petitioner, the Corporation Counsel of the City of New York, was the Presentment Agency in this juvenile delinquency proceeding. Respondent, Erik M., was the person under sixteen years of age alleged to be a juvenile delinquent. The Legal Aid Society, Juvenile Rights Division, served as Respondent's law guardian throughout the lower court proceedings.

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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

The Corporation Counsel of the City of New York respectfully petitions for a writ of certiorari to review the judgment of the New York State Supreme Court Appellate Division, First Department, in this case.

OPINIONS BELOW

The opinion and order from which Petitioner seeks certiorari is reported at 265 A.D.2d 256, 697 N.Y.S.2d 35 (1st Dept. 1999) and appears in the appendix at A-2. The opinion of the Family Court is unreported but appears in the appendix at A-4.

JURISDICTION

The Appellate Division judgment was entered on October 28, 1999. By order entered February 27, 2000, the New York State Court of Appeals, *sua sponte*, dismissed Petitioner's appeal which had been taken as of right (A-10). In an order entered May 25, 2000, the Appellate Division, First Department, denied Petitioner's motion seeking leave to appeal to the Court of Appeals (A-11). In an order entered September 5, 2000, the Court of Appeals denied Petitioner's motion seeking leave to appeal to that Court (A-12). Thus, the jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Pursuant to Article 3 of the New York State Family Court Act, a juvenile delinquency proceeding was initiated by the Presentment Agency against Respondent. A petition was filed, charging Respondent with committing acts which, had he been over the age of sixteen, would have constituted varying degrees of Criminal Possession of a Controlled Substance and Criminal use of Drug Paraphernalia, ranging from a class B felony to class A misdemeanors.

Through his law guardian, Respondent challenged the warrantless police search, seeking to preclude the physical evidence or, in the alternative, requesting a pre-trial Mapp hearing. Although the Presentment Agency opposed both applications, arguing that the search was initiated pursuant to the officers' community care-taking functions and was ministerial in nature, not designed to uncover evidence of criminality, the Family Court granted and conducted the pre-trial Mapp hearing.

The Suppression Hearing

At the Mapp hearing, Police Officer Michael Oliver, the responding officer who later arrested Respondent, was the sole testifying witness. He recalled the events leading to his recovery of the contraband as follows:

On the morning in question, Officer Oliver and his partner were on uniform duty and on patrol in their patrol car. At approximately eight o'clock a.m., they received a radio transmission from the Police Department's central dispatcher, alerting them to an emotionally disturbed person at the subject address. As they proceeded to the location, they received another radio transmission informing them that the person may have hung herself. At that point, pursuant to routine police procedures for responding to possible suicide scenes, the dispatcher also summoned a sergeant to the scene.

Upon arriving at the apartment, Officer Oliver was greeted by Respondent's father, whose native tongue is

Spanish. The father ushered him into the apartment and led him to a partially closed door. Through his body movements, the father made clear that he did not want to accompany the officer into the room. Thus, the officer entered the room alone, whereupon he observed a young dead woman hanging from the inside of the door. The officer looked around the bedroom, which contained a single bed and dresser with a mirror, but saw no evidence of foul play or criminality.

Concluding that the decedent had committed suicide, Officer Oliver exited the bedroom and joined Respondent and his family in the kitchen, where they had gathered. For the next five minutes, Officer Oliver attempted to gather the victim's pedigree information from the family. All he was able to ascertain, however, was that the victim had been living with Respondent and his family for approximately one month, during which time she resided in Respondent's bedroom, the same room in which she took her life. The two had briefly dated, though their relationship ended during the course of her stay. Respondent thought that her first name may have been Lilly, but he was unsure. They did not know her family name, nor did they know anything about her family. They suggested that the victim may have carried a pocketbook or school identification containing her true name and last known address.

Once it became clear that Respondent and his parents could not adequately identify the victim, Officer Oliver and his partner re-entered the bedroom to search for identifying information, such as the victim's pocketbook or any form of identification she may have carried. Upon opening the top drawer of the dresser, Officer Oliver immediately observed drugs, which later tested positive for cocaine, along with drug paraphernalia and a sum of currency. The items were ultimately seized and Respondent arrested.

Both parties rested at the close of Officer Oliver's testimony. During summations, Respondent argued that the warrantless search violated his Fourth Amendment rights because the officer lacked probable cause to believe that a crime was committed or that exigent circumstances

existed. The Presentment Agency countered that the officer was not engaged in a criminal investigation, that the room was never considered a crime scene, and that the officer acted reasonably. Thereafter, the Family Court denied Respondent's motion to suppress the evidence, finding that the search was administrative in nature and reasonable under the circumstances.

The Fact-Finding and Dispositional Hearings

Officer Oliver again testified on behalf of the prosecution at the fact-finding hearing. The sole witness called on Respondent's behalf was his mother. At the hearing's end, the Family Court found the officer's testimony entirely credible and that of Respondent's mother "bordering on perjurious." The court then issued findings to every count in the petition, with the exception of one previously withdrawn by the Presentment Agency.

At the dispositional hearing, Respondent was adjudicated a juvenile delinquent in need of supervision, treatment and confinement. He was placed with the Division For Youth, in a limited secure facility, for an initial period of up to fifteen months, with a specific directive that he be confined therein for a minimum of six months.

The Appellate Division Decision and Order

Respondent appealed to the Appellate Division, First Department, arguing that the Family Court erred in denying Respondent's motion to suppress the physical evidence, as the officers lacked probable cause and/or exigent circumstances to conduct the warrantless search. The Presentment Agency countered that the search was administrative in nature, undertaken in advancement of the police care taking function to identify dead human bodies and to ensure both timely notification to the next-of-kin and proper disposition of the body and personal effects. As such, it argued, that the search was initiated without a search warrant was completely irrelevant to the legality of the search. The Presentment Agency urged the Appellate Division to instead focus on:

> assess[ing] the reasons for the search and the extent to which it intrude[d] on legitimate privacy interests to determine whether, on balance, the government's action [was] reasonable.

Patchogue-Medford Congress of Teachers v. Bd. of Ed., 70 N.Y.2d 57, 68, 517 N.Y.S.2d 456 (1987) (citing People v. Scott, 63 N.Y.2d 518, 525, 483 N.Y.S.2d 649 (1984) and People v. John BB., 56 N.Y.2d 482, 487, 453 N.Y.S.2d 158, cert. den., 459 US 1010 (1982).

In reversing the Family Court's orders, the Appellate Division failed to engage in this analysis, choosing instead to baldly conclude that the search did not "fall within the parameters of the exception [to the warrant requirement] permitting warrantless searches for administrative purposes" and holding that a warrant should have been obtained (A-3). The court relied upon three federal cases to support its decision,[1] none of which were on point but all of which utilized the balancing test advocated by the Presentment Agency and discounted by the Appellate Division.

Subsequent Procedural History

Respondent served Petitioner with the Appellate Division order with notice of entry on or about November 5, 1999. Pursuant to New York State Civil Practice Law and Rules ("CPLR") §5501(b), a timely appeal was initiated, as of right, to the New York State Court of Appeals. By order dated February 27, 2000 and reported at 94 N.Y.2d 898, 707 N.Y.S.2d 142 (2000), the Court of Appeals dismissed the appeal, *sua sponte*. The order was served with notice of entry on or about March 6, 2000. Pursuant to CPLR §5514(a), Petitioner next sought

[1] New York v. Burger, 482 U.S. 691 (1987); Donovan v. Dewey, 452 U.S. 594 (1981); and Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967) (all involving warrantless inspections designed to enforce regulatory schemes carrying civil and/or criminal sanctions for non-compliance).

permission for leave to appeal to the Court of Appeals in a motion before the Appellate Division, First Department. That motion was denied on May 25, 2000 and a copy of the order with notice of entry was served on or about June 6, 2000. (__ A.D.2d __, __ N.Y.S.2d __ (1st Dept. 2000)). Finally, in a motion dated June 15, 2000, Petitioner requested permission for leave to appeal to the Court of Appeals from that Court. In an order dated September 5, 2000, the motion was denied. (__ N.Y.2d __, __ N.E.2d __(2000)). A copy of the order, with notice of entry, was served on or about September 21, 2000.

REASON FOR GRANTING THE PETITION

This case presents a unique opportunity to squarely address the profound differences between police intrusions initiated in furtherance of community care-taking functions from those undertaken in advancement of law enforcement objectives. The lack of judicial guidance in recognizing and appreciating the distinct expectations, motivations, and orientations associated with each has here resulted in a complete disregard for this Court's instruction that "[w]here a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause," such standard should be adopted. New Jersey v. T.L.O., 469 U.S. 325, 341 (1985). Indeed, the Appellate Division's holding in this case represents a growing and disturbing trend throughout the nation:

> Courts have often assumed that the warrant preference theory's presumptive probable cause and warrant requirements apply to community caretaking intrusions by police. They have commonly held that warrantless intrusions can be justified only when they fall within variously stated "exigent circumstances," "emergency," or "rescue" exceptions to this framework. These exceptions, however, accommodate only a portion of the factual circumstances in which police have traditionally intruded on private space to keep the peace, to protect people and property from perceived threats,

> or to render assistance to those in need. More fundamentally, the warrant preference theory itself affords at best an awkward language for assessing the constitutional reasonableness of such intrusions.

Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U Chi Legal F 261, 263 (1998) (Footnotes and citations omitted). Should this trend continue, every state's ability to promote public welfare will be unjustifiably curtailed.

In this case, the Appellate Division had no basis to conclude that the underlying search was initiated for law enforcement purposes. To the contrary, the uncontested facts unequivocally demonstrate that the search was motivated by the purely benign care-taking objectives of the police officers involved. Respondent himself invoked the Police Department's generally accepted community care-taking role by calling for assistance with the removal of a suicide victim's body from his home. Throughout the proceedings below, Respondent conceded that the victim's death was an obvious suicide and never challenged the officer's ability to determine same. He never alleged that the search was subterfuge for a criminal investigation, nor did he argue that police suspected a crime had been committed. To the contrary, Respondent accepted and adopted the officer's stated purpose behind initiating the search, which was to locate identifying information belonging to the victim, such as her pocketbook or school identification card, in an effort to determine her true name and last known address. He neither contested that these items were targeted based on information he and his family provided to the officer, nor did he question the officer's assumption that these items would be located in Respondent's room, the very room in which the victim had lived and taken her life.[2]

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[2] The officer's assumption that the victim's belongings would be in that room is consistent with the reasoning articulated in those cases bestowing a legitimate expectation of privacy to overnight guests and affording them standing to contest the legality of warrantless searches

Where, as here, the record is devoid of facts tending to suggest that a police intrusion was initiated for purposes of uncovering evidence of criminality, and where, as here, the action itself was so "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," Cady v. Dombrowski, 413 U.S. 433, 441 (1973), it is error to invoke a probable cause type analysis rather than one grounded in reasonableness, the actual benchmark for Fourth Amendment protections against searches and seizures. Indeed, "courts have held--and quite correctly--that search warrants are not required [for searches unrelated to law enforcement], linked as the warrant requirement textually is to the probable cause concept." South Dakota v. Opperman, 428 U.S. 364, 371 (1976). Thus, "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures" of the type presented at bar. Id. at 370-371, n. 5; Florida v. Jimeno, et. al., 500 U.S. 248 (1991); see Brinegar v. U.S. 338 U.S. 160, rehg. den., 338 U.S. 839 (1949); Agnello v. U.S., 269 U.S. 20 (1925); See also People v. Pinchback, 82 N.Y.2d 857, 631 N.E.2d 100 (1993); People v. Bigelow, 66 N.Y.2d 417, 488 N.E.2d 451 (1985); People v. Mendez, 199 A.D.2d 182, 605 N.Y.S.2d 94 (1st Dept. 1993), app. den., 83 N.Y.2d 874, 635 N.E.2d 303 (1994). Consequently, the constitutionality of the search at bar, both benevolent and benign in nature, must rest on the reasonableness of the police action, which is determined by "...weighing the governmental and societal interests being advanced against the individual's right to be free from arbitrary interference by law enforcement officers." People v. Galak, 80 N.Y.2d 715, 718, 610 N.E.2d 362 (1993) (citing U.S. v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)); Illinois v Lafayette, 462 U.S. 640 (1983), mot. granted, pet. den., 468 U.S. 1213 (1984); see also People v. Mitchell, 39 N.Y.2d 173, 179, 347 N.E.2d 607, cert. den., 426 U.S. 953 (1976); People v. Gonzalez, 62 N.Y.2d 386, 390, 465 N.E.2d 823 (1984).

In this case, for example, notwithstanding the Appellate Division's categorical rejection of this analytical

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of their rooms. E.g. Minnesota v. Olson, 495 U.S. 91 (1990).

approach, the Family Court recognized the strong governmental and societal interest "in determining the identity of the deceased minor" for purposes of notifying her next-of-kin and ensuring the proper disposition of her remains (A-5). This determination is well grounded in state law. In New York, "[t]he law is well settled that the surviving next of kin have a right to the immediate possession of the decedent's body for preservation and burial and that damages will be awarded against any person who unlawfully interferes with that right or improperly deals with the decedent's body [citations omitted]." Finn v. City of New York, 76 Misc.2d 388, 389 (App. Term, 1st Dept. 1973); see Darcy v. Presbyterian Hospital, 202 N.Y. 259, 95 N.E. 695, rehg. den., 203 N.Y. 547, 96 N.E. 1113 (1911); Stahl v. Necker, 184 App. Div. 85 (1st Dept. 1918); see also People v. Ringe, 197 N.Y. 143, 171 N.Y.S. 728 (1910). In fact, New York law requires that "those who deal with [dead] bod[ies] do so with due regard for the feelings and beliefs of the next of kin." Cf. Kohn v. United States, 591 F.Supp. 568, 573 (EDNY 1984), affd., 760 F.2d 253 (2d Cir. 1985). As for the governmental agency charged with taking custody of unidentified or unclaimed corpses and securing them against loss or theft pending identification and disposition, this community care-taking responsibility has long been relegated to police. See People v. Ringe, 197 N.Y. 143, 90 N.E. 451 (1910). It is also "the New York City Police Department...under the system in effect in New York City...[through] which notification of death is given to the family or next of kin." Finn v. City of New York, 70 Misc.2d 947 (1972), revd. on other grounds, 76 Misc.2d 388 (App. Term 1st Dept. 1973). Based on these presidents, there was overwhelming support for the Family Court's decision that there exists a strong governmental and societal interest in identifying suicide victims for purposes of notifying their next-of-kin and ensuring proper disposition of their remains.

Once the Family Court isolated the governmental interest involved, it proceeded to balance that interest against Respondent's Fourth Amendment rights. In so doing, the court correctly concluded that the search, undertaken to further the community care-taking objective of identifying dead human bodies, outweighed Respondent's rights and was therefore "a proper procedural

measure" (A-5). In engaging this balancing test, the Family Court analogized the competing interests at bar to those involved in police inventory searches, a well recognized administrative search excepted from the warrant requirement. E.g., Colorado v. Bertine, 479 U.S. 367, 371-372 (1987); Illinois v. Lafayette, 462 U.S. 640 (1983); South Dakota v. Opperman, 428 U.S. 364 (1976). Although the Appellate Division categorically rejected the Family Court's comparison of this case to those "fall[ing] within the parameters of a valid inventory search," the similarities between the two are immediately evident. In inventory searches, the governmental interest forwarded involves "protecting an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Colorado v. Bertine, 479 U.S. 367, 371-372 (1987). In this case, the governmental interest involved protecting a corpse, while in police custody, to insure against claims of untimely notification to the next-of-kin, improper preservation and/or burial, and unlawful interference with a survivor's rights. Both intrusions involve benign care-taking functions of the State, undertaken to protect individuals, to preserve property, and insure against legal claims for damages. Neither is motivated by, or designed to further, a criminal investigation.[3] Thus, since it has long been held that an individual's privacy rights are outweighed by the government's interest in inventorying property for purposes of protecting an owner's property and limiting police liability, so too must the government's interest in identifying decedents for purposes of ensuring proper disposition of the remains, timely notification to the next-of-kin, and limiting potential liability for related legal claims outweigh the Respondent's privacy rights in this case.

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[3] The only significant distinction is that inventory searches often precede the property owner's arrest, thereby implicitly heightening the likelihood of police either specifically seeking or inadvertently finding evidence of criminality, whereas the search at bar was undertaken in the complete absence of such odds and/or suspicion.

Rather than addressing the Family Court's analysis, the Appellate Division jumped to the conclusion that this case did "not fall within the parameters of the exception permitting warrantless searches for administrative purposes." (A-3). Of the three federal cases the Appellate Division chose to cite in support of this result, each involved warrantless inspection programs easily distinguishable from the intrusion at bar based upon their distinct purpose, randomness, and likely result. The governmental interest identified in each of those cases involved enforcing municipal codes, statutory schemes, and regulations. Inspection cite locations were targeted on an *ad hoc* basis and inspectors were naturally predisposed to searching for violations and issuing citations and sanctions therefor. See, e.g., New York v. Burger, 482 U.S. 691, 704 (1987) (enforcement of New York Vehicle and Traffic Law §415-a(5), violations of which constitute class A misdemeanor); Donovan v. Dewey, 452 U.S. 594, 606 (1980) (enforcement of Federal Mine Safety and Health Act of 1977 §103(a), violations of which result in civil penalties); Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967) (enforcement of San Francisco Housing Code §503, et. al., violations of which result in fine and/or imprisonment).[4] In this case however, the governmental interest involved identifying dead human bodies to insure timely notification to the next-of-kin and proper disposition of the decedent's person and property. Searching respondent's room for the victim's identity was narrowly tailored to that end and a proper exercise of police discretion. The officers had no intention of, or reason to foresee, uncovering evidence likely to result in respondent's arrest and prosecution. Thus, while the similarity in purpose and intended outcome between inspection programs and general law enforcement may

[4] Respondent has previously cited cases distinguishable on the same basis. E.g. Marshall v. Barlow's, Inc., 436 U.S. 307, 313 (1978) (warrantless inspection of business premises pursuant to section 8(a) of the Occupational Safety and Health Act of 1970); Sokolov v. Village of Freeport, 52 N.Y.2d 341, 346-347, 420 N.E.2d 55 (1981) (warrantless inspection of residential rental property pursuant to a Rental Permit Ordinance).

justify obtaining a warrant prior to inspecting commercial or private property, the same result is far from logical, let alone proper, for the benign intrusion at bar undertaken in furtherance of a benign community care-taking objective.

Respondent has relentlessly pursued an equally unavailing argument, analogizing this case to those involving warrantless searches initiated during criminal investigations. E.g., Flippo v. West Virginia, 528 U.S. 11 (1999) (homicide and assault); Minnesota v. Olson, 495 U.S. 91 (1990) (armed robbery); Arizona v. Hicks, 480 U.S. 321 (1987) (shooting investigation); Thompson v. Louisiana, 469 U.S. 17 (1984) (homicide investigation); Payton v. New York, 445 U.S. 573 (1980) (arrest inside home); Mincey v. Arizona, 437 U.S. 385 (1978) (homicide investigation); McDonald v. United States, 335 U.S. 451 (1948) (illegal lottery); People v. Cohen, 58 N.Y.2d 844, 446 N.E.2d 774, cert. den., 461 U.S. 930 (1983) (murder investigation), People v. Knapp, 52 N.Y.2d 689, 422 N.E.2d 531 (1981) (illegal drug sale investigation); People v. Hodge, 44 N.Y.2d 553, 378 N.E.2d 99 (1978) (fatal stabbing); People v. Mitchell, 39 N.Y.2d 173, 347 N.E.2d 607, cert. den. 426 U.S. 953 (1976) (investigation of missing person believed to be in danger). Each of those searches occurred at a crime scene, were initiated pursuant to a criminal investigation and/or after the commission of a crime, and were designed to uncover evidence of criminality to be introduced during a criminal trial. Such distinctions easily distinguish those cases from the one at bar. Furthermore, since there was no reason for police to believe that a crime was committed, a regulatory scheme violated, or that evidence thereof existed, there would have been no basis from which to swear out a warrant in the first instance.[5]

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[5] Even if, *arguendo*, a warrant could have been secured based on the facts presented here, "the real question is not what 'could have been achieved', but whether the Fourth Amendment require[d] such steps." Illinois v. Lafayette, 462 U.S. 640, 647 (1983). Courts "are hardly in a position to second guess police departments as to what practical administrative method will best [advance their goals]." Id. at 648.

In sum, this case presents a rare opportunity to directly address the wide range of care-taking functions undertaken by police on a daily basis and to articulate a clear standard for assessing such police undertakings. Society has come to expect local police departments

> to aid those in danger of physical harm, to preserve property, or 'to create and maintain a feeling of security in the community.' [They are expected to facilitate] things like the mediation of noise disputes, the response to complaints about stray and injured animals, and the provision of assistance to the ill or injured. Police [are] frequently [expected to] 'care for those who cannot care for themselves: the destitute, the inebriated, the addicted...and the very young.' They are often charged with taking lost property into their possession; [and] they not infrequently see to the removal of abandoned property...[6]

Precisely because these benevolent community care-taking activities have now long been relegated to local police, the need for a clear standard of constitutional review has never been more compelling. The potential ramifications of the Appellate Division's ruling are far reaching. Not only does it undermine traditional notions of Fourth Amendment analysis, but it perpetuates the inaccurate identification and assessment of benign police activities by other courts. If left unchecked, the states' interest in promoting public welfare will be abridged and law enforcement agencies nation-wide will suffer its chilling effect.

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[6] Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U Chi Legal F 261, 272 (1998) (footnotes and citations omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 8, 2000

APPENDIX

IN RE ERIK M., A PERSON ALLEGED TO BE A JUVENILE DELINQUENT, APPELLANT.

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PRESENTMENT AGENCY, RESPONDENT.

1309, 1310, 1311

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

October 28, 1999

COUNSEL:
For Appellant: Monica Drinane, The Legal Aid Society, Juvenile Rights Division, by Raymond E. Rodgers.

For Respondent: Michael D. Hess, The New York City Corporation Counsel, by Sharyn Rootenberg.

JUDGES:
Ellerin, P.J., Tom, Wallach, and Friedman, JJ.

DECISION:

Order of disposition, Family Court, New York County (Gloria Sosa-Litner, J.), entered on or about February 3, 1997, which adjudicated appellant a juvenile delinquent and placed him with the Division for Youth for a period of 15 months upon a fact-finding determination that appellant committed acts which, if committed by an adult, would constitute criminal possession of a controlled substance in the third, fifth and seventh degrees and criminal use of drug paraphernalia in the second degree, unanimously reversed, on the law and the facts, without costs, the motion to suppress granted, and the petition dismissed. Appeals from orders, same court and Judge, entered on or about January 24, and February 19, 1997, unanimously dismissed, without costs.

It is a basic tenet of constitutional law that, absent a search warrant, a search is unreasonable unless it falls within one of the specifically recognized exceptions to the warrant requirement. (People v. Hodge, 44 N.Y. 2d 553,

557). The presentment agency argues that the police conduct in this case falls within the scope of one of those exceptions, namely, that it was a permissible administrative search. We cannot agree.

The search at issue in this case, which was rooted in the investigation of the apparent suicide of a young woman, does not fall within the parameters of the exception permitting warrantless searches for administrative purposes (see, New York v. Burger, 482 U.S. 691; Donovan v. Dewey, 452 U.S. 594; Camara v. Municipal Court of San Francisco, 387 U.S. 523). Nor can it be said that there was any exigency justifying a warrantless search since the police could easily have secured the apartment and obtained a warrant. Additionally, contrary to the conclusion of the Family Court, this search did not fall within the parameters of a valid inventory search (see, Illinois v. Lafayette, 462 U.S. 640; South Dakota v. Opperman, 428 U.S. 364).

Accordingly, since the presentment agency has failed to demonstrate that the search in this case fell within any recognized exception to the warrant requirement, suppression of the items found in appellant's dresser drawer is mandated.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

ERIK MORALES,

A Person Alleged to be a Juvenile Delinquent,

Respondent.

Docket Number D-11626/96
DECISION AND ORDER

SOSA-LITNER, J.F.C.:

This juvenile delinquency petition was commenced by the filing of a petition on October 18, 1996. The Respondent's application for a pre-trial suppression hearing was granted on October 30, 1996 and the Mapp hearing itself was heard on November 19, 1996.

Now, after reviewing the case law submitted by both counsel and considering the testimony of the arresting officer and the arguments offered by counsel during summations, the Respondent's motion to suppress the physical evidence recovered from his room is denied.

Briefly, the police were summoned to the Respondent's home by his parents on October 18, 1996 to investigate the suicide of the Respondent's girlfriend in his bedroom. Although the Respondent and his father informed the police that the girl had been staying in the respondent's room for approximately one month, neither the Respondent nor his parents could provide the police with the deceased girl" full name, address or guardian. In order to make a complete identification of the deceased, Police Officer Michael Oliver proceeded to look through the Respondent's room in an attempt to locate a handbag or some form of identification. The first place he looked was in the Respondent's top dresser drawer, where he

immediately observed two bags containing large quantities of cocaine, more than 75 empty crack vials, and $377.00 in cash.

Counsel for the Respondent argues that the search was made in violation of the Respondent's constitutional and statutory rights since it was conducted without a search warrant, without probable cause, without consent of the Respondent or his parents and in the absence of exigent circumstances. Counsel for the Presentment Agency argues that the search was an inventory search, and therefore an exception to the warrant requirement. See, Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738 (1987).

The Court agrees with the Presentment Agency that the search was an inventory search, and further holds that it was proper based on the consent of the Respondent's parents.

Inventory searches are permitted without a warrant because the government has justifiable interests in protecting an individual's property during the course of a necessary police investigation, in protecting the Police Department from false claims arising from those investigations and insuring the safety of the police officers during the investigation. People v. Galak, 594 NYS2d 689 (1992). Although inventory searches are traditionally conducted of an automobile or other movable property after the an arrest [sic], the same rationale permits that permits [sic] the police to search that property allows the police to search a secured area that cannot otherwise be impounded. See, People v. Dancey, 443 NYS2d 776 (2d Dept. 1981), permitting the "safeguarding" of an apartment as a crime scene. There can be no question that the police had a legitimate interest in determining the identity of the deceased minor and that the room had to be secured as the scene of a death. Consequently, the police action in looking into the Respondent's dresser drawer was a proper procedural measure.

The search was also conducted according to standardized Police Department regulations as required by the Court of Appeals in People v. Galak, supra. See also, People v. Gonzalez, 477 NYS2d 103 (1984); Compare,

People v. Townsend, 544 NYS2d 349 (1st Dept. 1989). The Presentment Agency offered into evidence relevant portions of the Police Department's "Patrol Guide" which instructs the police to search both the body and the premises whenever a dead human body is discovered at a location other than his or her residence. See, Petitioner's Exhibit 1.

Although Officer Oliver testified that the Respondent and his father had informed the police that the deceased had been staying with the Respondent for "about a month," the transitory nature of her existence precludes a finding that the case address was her "home." The Respondent or his parent's [sic] informed the police that the decedent's mother may have been incarcerated out-of-state and that the decedent had lived or "was staying" with friends or family on 135th Street in Manhattan. The Respondent's parents were not the decedent's guardians, were not legally responsible for her care and were allegedly not even sure of her real name. As such, it was proper for Police Officer Oliver to follow the procedures proscribed for bodies found outside of the decedent's home.

Officer Oliver was merely performing this ministerial duty when he discovered the illicit drugs. Police Officer Oliver was not looking for contraband and credibly testified that he did not suspect foul play at that stage of his involvement. He had no reason to suspect that he would discover crack cocaine in the dresser and the Court finds no reason the [sic] doubt his veracity on that point. Moreover, the contraband was discovered in the very first place Officer Oliver looked. The search was narrow in scope, reasonable under the circumstances, and did not constitute an undue intrusion upon the Respondent's privacy. Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65; Compare, Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), where the Supreme Court suppressed contraband discovered during the course of a four-day search of the Defendant's home which included emptying clothes pockets, digging bullet fragments out of a wall, and pulling up sections of the carpet for analysis.

Finally, the Court also finds that the Respondent's parents consented to the search. They notified the police when they discovered a dead body in their son's room and sought police assistance in their home to deal with the situation. Police Officer Oliver's search for the identity of the deceased "constituted no more of an intrusion into (respondent)'s privacy than did the legitimate presence of the police" initially. People v. Dancey, supra, 443 NYS2d at 778.

Consequently, the Court finds that the search was proper and denies the Respondent's motion to suppress the physical evidence recovered from the Respondent's room. Parties are directed to be ready for trial.

This constitutes the order of this Court.

Enter:

/s/
Hon. Gloria Sosa-Lintner, J.F.C.

Dated: New York, NY
December 5, 1996

At a term of the Family Court of the State of New York, held in and for the County of New York, at 60 Lafayette St., New York, NY 10013, on February 03, 1997

PRESENT: Hon. GLORIA SOSA-LITNER
Judge

In the Matter of

ERIK MORALES,

A Person Alleged to be a Juvenile Delinquent,

Respondent.

Docket Number D-11626/96
ORDER OF DISPOSITION

An Order of Fact-finding dated the 24th day of January, 1997, having been entered in the Family Court of New York County adjudging that the Respondent herein did the following act(s):

acts as described in count 1 and counts 3 through 6 of the petition; and

The matter having thereafter duly come on for a dispositional hearing before the Court, and the Court, after having made an examination and inquiry into the facts and circumstances of the case and after making reports available to counsel in accordance with section 351.1 of the Family Court Act, finds upon a preponderance of the evidence that the Respondent requires supervision, treatment, or confinement; and

The Court, having fully considered the matter of a particular disposition pursuant to section 352.2 of the Family Court Act, finds that the Respondent requires confinement for the following reasons: see record; and it appearing that:

Continuation in respondent's home would be contrary to the need to protect the community and reasonable efforts to eliminate the need for removal of the respondent from home were not made because such efforts are inappropriate under the circumstances[;]

Now therefore, upon the findings made in the fact-finding and dispositional hearings herein and upon all proceedings had herein, it is hereby

ORDERED and ADJUDGED that the above-named respondent is a juvenile delinquent on the ground that Respondent, while under sixteen years of age, did act(s) which if done by an adult would constitute the crime(s) of: [Criminal Possession of a Controlled Substance ("CPCS")] 3, CPCS 7, CPCS 5 (2 counts), and Criminally Using Drug Paraphernalia 2; and on the further ground that the Respondent requires supervision, treatment, or confinement; and it is therefore

ORDERED that this proceeding be and the same is continued and the Respondent be and hereby is placed for a period of 15 months less the period spent in detention pending disposition in the custody of the New York State Division for Youth for placement with DFY Limited Secure, 6 months minimum, to run concurrently with 30-D-14168/96, subject to further orders of this Court. In the event the New York Division for Youth is unable to place the child in accordance with the direction hereof, or in the event the placement with the authorized agency is discontinued, the Division for Youth shall apply to the Court for an order to stay, modify, set aside, or vacate such directive pursuant to section 355.1 of the Family Court Act.

and it is further

ORDERED Respondent must receive counselling [sic].

Dated: February 03, 1997

ENTER:

/s/
Hon. Gloria Sosa-Lintner, J.F.C.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-second day of February 2000

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 156 SSD 5

In The Matter of Erik M., A Person Alleged to be a Juvenile Delinquent,

Respondent.

Presentment Agency,

Appellant.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

/s/ Stuart M. Cohen
Clerk of Court

At a Term of the Appellate Division of the Supreme Court held in and for the First judicial Department in the County of New York on May 25, 2000

Present - Hon. Peter Tom, Justice Presiding,
Betty Weinberg Ellerin
Richard W. Wallach
David Friedman, Justices.

In re Erik M.,

A Person Alleged to be a Juvenile Delinquent,

Appellant.

Presentment Agency

M-2125
Docket #11626/96

The presentment agency having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on October 28, 1999 (Appeal Nos. 1309-1311),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

/s/Catherine O'Hagan Wolfe

Clerk.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fifth day of September 2000

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 766

In The Matter of Erik M., A Person Alleged to be a Juvenile Delinquent,

Respondent.

Presentment Agency,

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Clerk of Court